

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|-----------------------------|---|-----------------|
| THE APPLICATION OF TELCOM |) | |
| NETWORK INC. FOR A |) | |
| CERTIFICATE OF CONVENIENCE |) | |
| AND AUTHORITY TO TRANSACT |) | |
| THE BUSINESS OF AN |) | CASE NO. 95-495 |
| INTEREXCHANGE |) | |
| TELECOMMUNICATIONS SERVICES |) | |
| PROVIDER WITHIN THE STATE |) | |
| OF KENTUCKY |) | |

O R D E R

This matter arising upon the amended petition of Telcom Network Inc. ("Telcom"), filed May 5, 1996, for confidential protection of portions of its contract with GE Capitol Communications Services Corporation ("GECCS") and New Enterprise Wholesale Services ("NEWS") and its contract with Tel-Save, Inc. ("Tel-Save") on the grounds that disclosure of the information is likely to cause Telcom competitive injury, and it appearing to this Commission as follows:

Telcom has filed an application for a Certificate of Public Convenience and Necessity to operate as a reseller of interexchange telecommunications services within this state. In the course of processing the application, the Commission, on February 1, 1996, directed Telcom to furnish certain information concerning its operations. Included was a request for copies of contracts with underlying carriers for whom it had marketed long-distance services in this state. On April 5, 1996, Telcom responded to the request by filing the two contracts which contain the information it seeks to protect. At the same time,

Telcom filed a petition to protect the contracts in their entirety on the grounds that their disclosure would permit an unfair commercial advantage to its competitors. The petition was denied on April 18, 1996 because it failed to demonstrate how the competitors would benefit from disclosure of the agreements and because the petition did not comply with the procedural requirements of the regulation.

On May 5, 1996, Telcom filed an amended petition. Unlike the original petition, which sought to protect the contracts in their entirety, the amended petition seeks to protect only designated portions of the agreement.

GECCS is a reseller of telecommunications services and NEWS acts as its agent for the purpose of marketing and selling those services. Under the terms of their contract with Telcom, Telcom has purchased certain wholesale telecommunications products and services offered by GECCS for resale by Telcom in states where it is certified to operate and has been appointed by NEWS to act as its sales representative for the purpose of marketing and selling GECCS' products in jurisdictions where Telcom is not certified. The information sought to be protected in the agreement has been divided by Telcom into three separate categories. The first category is information contained in the following articles and paragraphs of the contract:

1. Article III, ¶ 3.5, "Commission Payments"
2. Article III, ¶ 3.6, "Credit Charges"
3. Article IV, ¶¶ 4.1 & 4.2 re "Volume Commitment"
4. Article VI, ¶¶ 6.3, "Costs"
5. Article VI, ¶ 6.4, "Customer Payments"
6. Article VI, ¶ 6.5, "Disbursement of Funds Received from AT&T"

7. Article VI, ¶ 6.6, "Disbursement of Funds Received for Network-Billed Products"
8. Article VI, ¶ 6.9, "On-Line Access"
9. Article VII, ¶ 7.1, "Monthly Settlement"
10. Article VII, ¶ 7.2, "Disputes"
11. Article VII, ¶ 7.3, "Grant of Security Interest"

The information identified above concerns Telcom's compensation, cost commitments and security agreements and details the exact manner in which Telcom receives compensation under the agreement and the contractual concessions it has agreed to in its relationship with GECCS. Knowledge of this information would benefit Telcom's competitors because it would reveal to them the terms and limitations of Telcom's relationship with GECCS. Therefore, the information should be protected as confidential.

The second category of information sought to be protected is contained in the following articles and paragraphs of the contract:

1. Article IX, ¶ 9.5 "Movement of Customers"
2. Article XI, ¶¶ 11.1-11.4, "Indemnification"
3. Article XIII, ¶¶ 13.1-13.4, "Dispute Resolution"
4. Article XIV, ¶ 14.4, "Removal of Customers"
5. Article XIV, ¶ 14.5, "Settlement Process"
6. Article XIV, ¶¶ 14.6 (a) & (b), "Post-Termination Responsibilities"

Articles XI and XIII of the agreement set forth terms for indemnification and for dispute resolution. Disclosure of such information could adversely affect Telcom by compromising its position in any potential litigation with third parties.

The remaining provisions in the category concern the movement of Telcom customers at the expiration or termination of the agreement. Knowledge of the limitations concerning Telcom's movement of customers could be used against Telcom to drive the value of its customer base below its true market value.

Because Telcom operates in a competitive market anything that reduces its capability to conduct business serves to benefit its competitors. Therefore, while Telcom's competitors may not be able to derive a direct benefit from the information, its disclosure could weaken Telcom's ability to compete in the market and the information in this category of the contract should be protected from disclosure as confidential.

The third category of information sought to be protected is found in the following addenda and amendment to the contract:

1. Addendum "A", pp. 28--28L.8, "Rate Schedule"
2. Addendum "B", p. 29, "Additional Fees"
3. Addendum "C", p. 30, "Residential Orders"
4. Amendment, ¶ 14.4, "Other Termination"

Addendum A sets forth all the buy rates available to Telcom under the agreement. Disclosure of this information would reveal to Telcom's competitors its price limitations which they could use in marketing their competing services. Addendum B sets forth the initiation costs for establishing billing under the contract. This information would provide competitors with information concerning Telcom's operating costs which they could likewise use in marketing their competing services. Therefore, disclosure of the information is likely to cause Telcom competitive injury and the information should be protected as confidential.

Addendum C sets forth a limitation on the number of orders Telcom can submit each month under the contract. Public knowledge of this information would weaken Telcom's ability to negotiate with other resellers and underlying carriers with providing excess customer orders, thereby weakening its position in the marketplace. Therefore, competitors would gain an indirect advantage from disclosure of this information and it should be protected as confidential.

¶14.4 of the first amendment to the contract sets forth the parties' rights if GECCS and NEWS choose to terminate the agreement upon a tariff, agreement, or option change or upon a material change in the law. Disclosure of this information could affect the marketability of Telcom's customer base, and drive its value below its true market value, thereby weakening Telcom's ability to compete. Therefore, the information should be protected as confidential.

Under the terms of the agreement between Telcom and Tel-Save, Telcom has acquired from Tel-Save the use of an authorized partition of a contract between Tel-Save and AT&T. Tel-Save has divided the information it seeks to protect into two categories. The information in the first category is found in the following sections:

1. Section 5(a)(iv), re "Guarantee of Payment in Full"
2. Section 5(b), re "Payment of Customer Credit Errors"
3. Section 7, "Non-complete Agreement"
4. Section 8(b), re "Agreement re Injunction"
5. Section 12, "Payments; Fees and Charges"

Section 5(a)(iv) sets forth the conditions under which Telcom has guaranteed Tel-Save its customers' payments in full. Section 5(b) provides the manner in which Telcom

has agreed to compensate Tel-Save for customer credit errors. Both provisions affect Telcom's overhead in the relationship and if publicly disclosed would provide valuable cost information to Telcom's competitors. Therefore, the information should be protected as confidential.

Section 7 of the contract contains the provisions under which the parties agree not to compete with one another. Section 8 under the contract contains the provisions under which an injunction may be obtained to enforce the contract. Disclosure of these terms could adversely affect Telcom's ability to negotiate more favorable returns with other resellers or underlying carriers in the future. Therefore, the information should be protected as confidential.

Section 12 of the contract sets forth the details of Telcom's buy rates and compensation under the agreement. Disclosure of this information would provide Telcom's competitors with the payments, fees and other charges that Telcom is required to pay by reason of the contract. This information could be of substantial value to competitors and the information should be protected as confidential.

The second category of information for which Telcom has requested confidential protection is contained in the following exhibit:

1. Exhibit A, Assignment And Security Agreement, from beginning through Section 3
2. Exhibit A, Assignment And Security Agreement, Section 5(a)(i)-5(a)(iii)
3. Exhibit A, Assignment And Security Agreement, Section 8, "Payments under the Assigned Agreements"
4. Exhibit A, Assignment And Security Agreement, Section 9, "TS Appointed Attorney-in-Fact"

5. Exhibit A, Assignment And Security Agreement, Section 12(a)-12(f), "Remedies"
6. Exhibit A, Assignment And Security Agreement, Section 13, "Indemnity and Expenses"

Disclosure would hinder Telcom's ability to negotiate a more favorable security agreement with a different reseller or underlying carrier and, therefore, the information should be protected as confidential.

The third category of information sought to be protected under the contract is contained in Exhibit B as follows:

1. Exhibit B, Lock Box And Security Agreement, ¶ 5, "Security Interest in Lock Box"
2. Exhibit B, Lock Box And Security Agreement, ¶ 6, "Fees and Expenses"
3. Exhibit B, Lock Box And Security Agreement, ¶ 8(d), "Limitation of Liability"
4. Exhibit B, Lock Box And Security Agreement, ¶ 8(f), "Indemnification of Bank"

Disclosure of the information could prevent Telcom from negotiating a more favorable agreement with another reseller or underlying carrier and, therefore, the information should be protected as confidential.

The final category of information sought to be protected is contained in the following amendments and addendum to the agreement:

1. The August 14, 1995 Amendment to the Partition Agreement
2. The February 2, 1995 Amendment to the Partition Agreement re pricing and volume commitments
3. Addendum to Existing Partition Agreement, "Tel-Save Contract Tariff 516 800 Service Plan Commission Agreement"

The amendments and/or addendum to the contract contain detailed information concerning Telcom buy rates, commissions and/or volume commitments. This information would be of substantial value to Telcom's competitors and the information should be protected as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:


1. Those portions of the contract between Telcom and GECCS and NEWS, which Telcom has petitioned be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.


2. Those portions of the contract between Telcom and Tel-Save, which Telcom has petitioned be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

Done at Frankfort, Kentucky, this 26th day of June, 1996.


PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director